

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STRUCTURE PROBE INC.,

Plaintiff,

v.

EMS ACQUISITION CORP. (D/B/A,
ELECTRON MICROSCOPY SCIENCES).

Defendant.

Civil Action No. 07-CV-3893 (LBS)

Judge Leonard B. Sand

**AFFIDAVIT OF RAYMOND J. DOWD IN SUPPORT OF
EMS's MOTION TO DISMISS COUNT I, IN PART, COUNT II, AND COUNT III OF
STRUCTURE PROBE, INC.'s COMPLAINT**

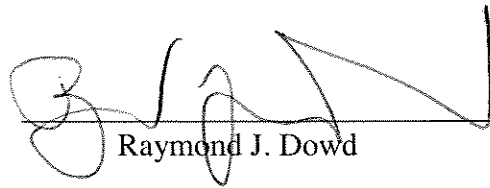
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

1. I am a member of the bar of this Court and of the law firm of Dunnington, Bartholow & Miller, LLP, counsel to Defendant EMS Acquisition Corp. d/b/a, Electron Microscopy Sciences ("EMS") in this matter. I submit this affidavit in support of EMS's Motion to Dismiss Count I, in Part, Count II, and Count III of Structure Probe, Inc.'s Complaint.

2. Attached hereto are the following Exhibits:

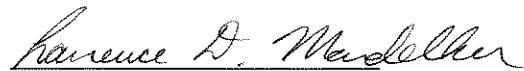
Exhibit A: Copy of the Complaint.

Exhibit B: Copy of *M'Baye v. N.J. Sports Prod., Inc.*, 06 Civ. 3439 (DC), 2007 U.S. Dist. LEXIS 9101 (S.D.N.Y. Feb. 7, 2007).



Raymond J. Dowd

Sworn to before me this
20 day of September, 2007



Notary Public

Lawrence D. Mandelker
Notary Public New York State
No. 02MA6117539
Qualified Bronx County
Expiration 11/1/08